IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2395 OF 2005

Suhas Vasantrao Achalkar ...Applicant

Versus

Sanjay Baburao Chaugule & Anr ...Respondents

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Mr. P.G. Chavan i/b Swarup A. Tawade, Advocate for Applicant.

Mr. V.B. Konde Deshmukh, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 5TH AUGUST, 2005

P. C.:-

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State.

2. The applicant has prayed for quashing of proceedings in Criminal Case No.1304/S of 1998 which is pending in the Court of learned Judicial Magistrate First Class, Sangli at Sangli. In the said case, process has been issued against the applicant under Section 138 of Negotiable Instruments Act. The learned advocate for the applicant submitted that the learned Magistrate committed an error in issuing process and the said process deserves to be set aside. If the process issued

against the applicant is set aside, the proceedings in respect of the applicant would come to an end.

3. It may be stated here that the applicant earlier preferred an application for recalling of process before the learned Magistrate, however, the said application came to be rejected. In view of the decision of the Supreme Court in the case of **Adalat Parsad Vs. Rooplal Jindal & Ors. 2004(4) Mh.L.J. 274,** it is clear that the Magistrate cannot recall the order of issuance of process. Hence, I am not inclined to interfere with the said order. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No. 550 of 2005, the applicant has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my opinion, it would be appropriate that the applicant prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the applicant to prefer revision before the concerned Sessions Court. The learned advocate for the applicant states that the necessary revision would be preferred within a period of four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for

a period of four weeks from today. It is made clear that the revision shall be preferred in respect of the order of Magistrate issuing process and not in respect of the order of Magistrate rejecting the application of the applicant for recall of process.

5. On the necessary revision being preferred by the applicant before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

6. Application is disposed of.

7. Office to issue an authenticated copy of this order to the parties.

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